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MAILED
SEP 15 2010
OFFICE OF PETITIONS

In re Patent No. 7,674,459	:	
Fung et al.	:	DECISION ON REQUEST FOR
Issue Date: March 9, 2010	:	RECONSIDERATION OF
Application No. 10/583,926	:	PATENT TERM ADJUSTMENT
Filed: June 20, 2007	:	AND NOTICE OF INTENT
Attorney Docket No. 12279-200-999	:	TO ISSUE CERTIFICATE OF
Title: TREATMENT OF CANCER WITH	:	CORRECTION
NOVEL ANTI-IL13 MONOCLONAL	:	
ANTIBODIES	:	

This is a decision on the petition filed on May 5, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred fifty-six (456) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 211 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 259 days (June 24, 2009 to March 9, 2010 the day of issuance of the patent).

Patentees contend that the 54 day reduction taken for the submission of the request for a corrected filing receipt pursuant to 37 CFR 1.704(c)(10) should instead be a 14 day reduction. Patentees argument is convincing in that the 54

reduction should instead be a 15 day reduction. 37 CFR 1.704 (c)(10) provides:

(10) Submission of an amendment, under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The Notice of Allowance was mailed on October 16, 2009. On January 15, 2010, patentees filed a request for corrected filing receipt. The submission of the request constituted a failure to engage pursuant to 37 CFR 1.704 (c)(10). This period is 15 days, counting the number of days in the period beginning on January 15, 2010 and ending on January 29, 2010, the date of the mailing of the corrected filing receipt.

Patentees' total delay is 15 days (January 15, 2010 to January 29, 2010).

In view thereof, the patent is entitled to an overall adjustment of 455 days.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred fifty-five (455) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Petitions Attorney, Charlema Grant at (571) 272-3215.



Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,674,459 B2

DATED : March 9, 2010

DRAFT

INVENTOR(S) : Fung et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 157 days

Delete the phrase "by 157 days" and insert -- by 455 days--